

PART 46

QUALITY ASSURANCE

46.101 Definitions.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
*****	***** “Commercial item” (see 2.101). ***** [FAC 90-32]

46.102 Policy.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
Agencies shall ensure that— ***** (e) Nonconforming supplies or services are rejected, except as otherwise provided in 46.407; and	Agencies shall ensure that— ***** (e) Nonconforming supplies or services are rejected, except as otherwise provided in 46.407; (f) Contracts for commercial items shall rely on a contractor's existing quality assurance system as a substitute for compliance with Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired permit in-process inspection (Section 8002 of Pub. L. 103-355). Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice; and
—(f) The quality assurance and acceptance services of other agencies are used when this will be effective, economical, or otherwise in the Government’s interest (see Subpart 42.1).	(g) The quality assurance and acceptance services of other agencies are used when this will be effective, economical, or otherwise in the Government’s interest (see Subpart 42.1). [FAC 90-32]

46.202 Types of contract quality requirements.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
Contract quality requirements fall into three general categories, depending on the extent of quality assurance needed by the Government for the acquisition involved.	Contract quality requirements fall into four general categories, depending on the extent of quality assurance needed by the Government for the acquisition involved. [FAC 90-32]

46.202-1 Contracts for commercial items.

When acquiring commercial items (see Part 12), the Government shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

[FAC 90-32]

46.202-2 Government reliance on inspection by contractor.

~~46.202-1~~ Government reliance on inspection by contractor.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>*****</p> <p>(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in advance of their tender for acceptance, or to pass judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider—</p> <p>(1) The nature of the supplies and services being purchased and their intended use (see 46.204 and Table 46-1);</p> <p>*****</p>	<p>*****</p> <p>(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in advance of their tender for acceptance, or to pass judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider—</p> <p>(1) The nature of the supplies and services being purchased and their intended use;</p> <p>***** [FAC 90-32]</p>

46.202-3 Standard inspection requirements. [FAC 90-32]

~~46.202-2~~ Standard inspection requirements.

46.202-4 Higher-level contract quality requirements. [FAC 90-32]

~~46.202-3~~ Higher-level contract quality requirements.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) Higher-level contract quality requirements are contained in the clause prescribed in 46.311. Such requirements are appropriate in solicitations and contracts for complex and critical items (see 46.203(b) and (c)) or when the technical requirements of the contract are such as to require—</p> <p>(1) Control of such things as work operations, in-process controls, and inspection (see 46.204 and Table 46-1); or</p> <p>*****</p>	<p>(a) Higher-level contract quality requirements are contained in the clause prescribed in 46.311. Such requirements are appropriate in solicitations and contracts for complex and critical items (see 46.203(b) and (c)) or when the technical requirements of the contract are such as to require—</p> <p>(1) Control of such things as work operations, in-process controls, and inspection; or</p> <p>***** [FAC 90-32]</p>

46.203 Criteria for use of contract quality requirements.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
* * * * *	* * * * *
(a) <i>Technical description.</i> Contract items may be technically classified as—	(a) <i>Technical description.</i> Contract items may be technically classified as—
(1) Commercial (described in commercial catalogs, drawings, or industrial standards);	(1) Commercial (described in commercial catalogs, drawings, or industrial standards; see Part 2);
	or
(2) Military-Federal (described in Government drawings and specifications); or	(2) Military-Federal (described in Government drawings and specifications).
(3) Off-the-shelf (see 46.101).	* * * * * [FAC 90-32]
* * * * *	

46.204 [Reserved] [FAC 90-32]

46.204 ~~Application of criteria.~~

~~—Subject to mandatory limitations contained in the clause prescriptions (see Subpart 46.3), Table 46-1 may be used as a guide in selecting the appropriate contract quality requirements. Where circumstances warrant, the contracting officer may specify a requirement different from that arrived at through use of the table, except for off-the-shelf items.~~

<u>Technical Description</u>	<u>Complexity</u>	<u>Application</u>	<u>Quality Requirements</u>
Commercial	Noncomplex	Noncritical Common	Contractor inspection (46.202-1)
Commercial	Noncomplex	Noncritical Peculiar	Contractor inspection (46.202-1)
Commercial	Noncomplex	Critical	Standard inspection (46.202-2)
Commercial	Complex	Noncritical Common	Contractor inspection (46.202-1)
Commercial	Complex	Noncritical Peculiar	Standard inspection (46.202-2)
Commercial	Complex	Critical	Higher-level (46.202-3)
Military-Federal	Noncomplex	Noncritical Common	Standard inspection (46.202-2)
Military-Federal	Noncomplex	Noncritical Peculiar	Standard inspection (46.202-2)

Military-Federal	Noncomplex	Critical	Higher-level (46.202-3)
Military-Federal	Complex	Noncritical Common	Standard inspection (46.202-2)
Military-Federal	Complex	Noncritical Peculiar	Higher-level (46.202-3)
Military-Federal	Complex	Critical	Higher-level (46.202-3)
Off-the-shelf	All	Noncritical	Contractor inspection (46.202-1)
Off-the-shelf	All	Critical	Standard inspection (46.202-2)

46.301 Contractor inspection requirements.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be within the small purchase limitation and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202- 1(b) .	The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be at or below the simplified acquisition threshold and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202- 2(b) . [FAC 90-29 & FAC 90-32]

46.311 Higher-level contract quality requirement.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement (Government Specification), in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate-(see 46.202-3).	The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement (Government Specification), in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202- 4). [FAC 90-32]

46.402 Government contract quality assurance at source.

FAR as of FAC 90-25

Agencies shall perform contract quality assurance, including inspection, at source if—

* * * * *

(e) A higher-level contract quality requirement is included in the contract (see 46.202-3);

* * * * *

FAR as revised

Agencies shall perform contract quality assurance, including inspection, at source if—

* * * * *

(e) A higher-level contract quality requirement is included in the contract (see 46.202-4);

* * * * * [FAC 90-32]

46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

FAR as of FAC 90-25

(a) In determining the type and extent of Government contract quality assurance to be required for ~~small purchases~~, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work (see 46.202-4).

(b) When the conditions in 46.202-4~~(b)~~ apply, the following policies shall govern:

(1) Unless a special situation exists, the Government shall inspect ~~small purchases~~ at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.

(2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situations include those listed in 46.402 and contracts for items having critical applications. See ~~Table 46-1 at 46.204 for other possible situations.~~

* * * * *

FAR as revised

(a) In determining the type and extent of Government contract quality assurance to be required for **contracts at or below the simplified acquisition threshold**, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work (see 46.202-2).

[FAC 90-29 & FAC 90-32]

(b) When the conditions in 46.202-2**(b)** apply, the following policies shall govern: [FAC 90-32]

(1) Unless a special situation exists, the Government shall inspect **contracts at or below the simplified acquisition threshold** at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable. [FAC 90-29]

(2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situations include those listed in 46.402 and contracts for items having critical applications.

* * * * * [FAC 90-32]

46.709 Warranties of commercial items.

FAR as of FAC 90-25

—If a warranty of commercial items is appropriate, the contracting officer may include a warranty of supplies clause modified for commercial items (see the clause at 52.246-17, Warranty of Supplies of a Noncomplex Nature, Alternate I, and 52.246-18, Warranty of Supplies of a Complex Nature, Alternate I). More appropriate warranty language may be included if the contracting officer determines that the Government's planned usage of the item is inconsistent with the item's normal usage, or that Government specifications have substantially altered the item. The Government may adopt the contractor's standard commercial warranty if the contracting officer determines it is not inconsistent with the rights that would be afforded the Government under a warranty of supplies clause (see the clauses at 52.246-17, Warranty of Supplies of a Noncomplex Nature, and 52.246-18, Warranty of Supplies of a Complex Nature) or other terms of the contract.

FAR as revised

The contracting officer should take advantage of commercial warranties, including extended warranties, where appropriate and in the Government's best interests, offered by the contractor for the repair and replacement of commercial items (see Part 12). [FAC 90-32]

46.710 Contract clauses.

FAR as of FAC 90-25

The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of warranty coverage is appropriate. However, because of the many situations that may influence the warranty terms and conditions appropriate to a particular acquisition, the contracting officer may vary the terms and conditions of the clauses and alternates to the extent necessary. The alternates prescribed in this section address the clauses; however, the conditions pertaining to each alternate must be considered if the terms and conditions are varied to meet a particular need.

(a)(1) * * * * *

(2) If commercial items are to be acquired, the contracting officer may use the clause with its Alternate I.

(3) * * * * *

(4) * * * * *

(5) * * * * *

FAR as revised

The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of a warranty is appropriate (**see 46.709 for warranties for commercial items**). However, because of the many situations that may influence the warranty terms and conditions appropriate to a particular acquisition, the contracting officer may vary the terms and conditions of the clauses and alternates to the extent necessary. The alternates prescribed in this section address the clauses; however, the conditions pertaining to each alternate must be considered if the terms and conditions are varied to meet a particular need.

(a)(1) * * * * *

(2) * * * * *

(3) * * * * *

(4) * * * * *

~~(6)~~ * * * * *

(5) * * * * *

(b)(1) * * * * *

(b)(1) * * * * *

~~—(2) If commercial items are to be acquired, the contracting officer may use the clause with its Alternate I.~~

~~(3)~~ * * * * *

(2) * * * * *

~~(4)~~ * * * * *

(3) * * * * *

~~(5)~~ * * * * *

(4) * * * * *

* * * * *

* * * * * [FAC 90-32]

46.804 Items priced at or based on catalog or market prices.

FAR as of FAC 90-25

Contractors generally (a) carry product liability or similar insurance, or maintain a reserve for self-insurance, covering liability arising from defective items and (b) reflect its cost in catalog or market prices. Therefore, for items being priced at or based on catalog or market prices (see 15.804-3(e)), contracting officers should not provide relief under the policy in 46.803 by including a clause prescribed in 46.805, unless they obtain an appropriate reduction from the catalog or market price to reflect reduced contractor liability.

FAR as revised

Contractors generally (a) carry product liability or similar insurance, or maintain a reserve for self-insurance, covering liability arising from defective items and (b) reflect its cost in catalog or market prices. Therefore, for items being priced at or based on catalog or market prices (see 15.804-**1(b)(2)**), contracting officers should not provide relief under the policy in 46.803 by including a clause prescribed in 46.805, unless they obtain an appropriate reduction from the catalog or market price to reflect reduced contractor liability.

[FAC 90-32]

52.246-11 Higher-Level Contract Quality Requirement (Government Specification).

FAR as of FAC 90-25

As prescribed in 46.311, insert the following clause in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-3):

* * * * *

FAR as revised

As prescribed in 46.311, insert the following clause in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-**4**):

* * * * * [FAC 90-32]

52.246-17 Warranty of Supplies of a Noncomplex Nature.

FAR as of FAC 90-25

* * * * *

~~Alternate I (APR 1984). If commercial items are to be acquired, delete paragraph (b)(4), and substitute a paragraph substantially the same as the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:~~

FAR as revised

* * * * *

~~Alternate I~~ **[RESERVED]**

* * * * * [FAC 90-32]

—(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for [*Contracting Officer shall state the specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*] all supplies furnished—

- (i) Are of a quality to pass without objection in the trade under the contract description;
- (ii) Are fit for the ordinary purposes for which the supplies are used;
- (iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;
- (iv) Are adequately contained, packaged, and marked as the contract may require; and
- (v) Conform to the promises or affirmations of fact made on the container.

(R 7-105.7(d)(2) 1976 JUL)

* * * * *

52.246-18 Warranty of Supplies of a Complex Nature.

FAR as of FAC 90-25

* * * * *

Alternate I (APR 1984). If commercial items are to be acquired, delete paragraph (b)(6), and substitute a paragraph substantially the same as the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:

- (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that, at the time of delivery, all supplies—
- (i) Are of a quality to pass without objection in the trade under the contract description;
 - (ii) Are fit for the ordinary purposes for which the supplies are used;
 - (iii) Are, within the variations permitted by the contract, if any, of an even kind, quality, and quantity within each unit and among all units;
 - (iv) Are adequately contained, packaged, and marked as the contract may require; and
 - (v) Conform to the promises or affirmations of fact made on the container.

(R 7-105.7(d)(2) 1976 JUL)

* * * * *

FAR as revised

* * * * *

Alternate I [RESERVED]

* * * * * [FAC 90-32]